

EMPIRE STATE NEW MARKET CORPORATION

at the offices of the  
New York State Urban Development Corporation  
d/b/a Empire State Development Corporation  
633 Third Avenue  
New York, New York 10017

Meeting of the Directors

Monday

September 29, 2014 – 11:00 a.m.

PROPOSED AGENDA

CORPORATE ACTIONS

1. Approval of the Minutes of the March 28, 2014 Directors' Meeting
2. Advisory Board – Confirmation and Appointment of Advisory Board Members
3. NMTC Allocation Application – Authorization to Sign and File a 2014 New Market Tax Credit Allocation Application; and to Take Related Actions

**Item # 1**

**EMPIRE STATE NEW MARKET CORPORATION**

Meeting of the Directors  
Held at the Offices of  
Empire State Development  
633 Third Avenue  
New York, New York 10017

March 28, 2014

**MINUTES**

**In Attendance**

**Directors:** Kenneth Adams – Acting Chair  
Sam Hoyt (via teleconference)  
Mehul Patel  
Susan Shaffer

**ESNMC Staff:** Elizabeth R. Fine – General Counsel  
Brendan Healey – Vice President  
Jonevan Hornsby – President  
Kathleen Mize – Controller  
Debbie Royce – Corporate Secretary

**ESD Staff:** Jonathan Beyer – Senior Counsel  
Joseph Chan – EVP, Real Estate Development  
Tony Sclafani – Public Affairs  
Sankar Singh – Manager, Contract Audit & Administration  
Robert White – Audit Manager, Internal Audit

The meeting of the Empire State New Market Corporation (“ESNMC” or the “Corporation”) was called to order at 2:05 p.m. Director Adams noted for the record that the meeting was being webcast and that he would be the Acting Chair for today’s meeting. Further, he stated that the Directors had received the relevant written materials in advance of the meeting and noted for the record the Corporation’s policy, which welcomes public comments on the items on the current Agenda.

Before beginning with the substantive portion of the meeting, Acting Chairman Adams asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. He asked if so, that the appropriate disclosure be made on the record at this time to ensure that the Director was reminded to recuse themselves from any discussion or vote with regard to such item.

Noting for the record that no Directors had any conflicts to report, Acting Chairman Adams welcomed Elizabeth Fine to the meeting as the Corporation's General Counsel. He reminded everyone that this position was previously made ex-officio to correspond to that title at Empire State Development ("ESD"). He further noted that Ms. Fine was appointed as ESD's Executive Vice President – Legal and General Counsel at its February Directors' meeting.

The first order of business was the approval of the Minutes of the March 26, 2013 and September 16, 2013 meetings of the Directors. Noting no corrections on either set of Minutes and upon motion duly made and seconded, the following resolution was unanimously adopted:

44. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 26, 2013 AND SEPTEMBER 16, 2013 MEETINGS OF THE DIRECTORS OF THE EMPIRE STATE NEW MARKET CORPORATION

---

RESOLVED, that the Minutes of the meetings of the Corporation held on March 26, 2013 and September 16, 2013 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

Next, Jonathan Beyer requested the appointment of an Officer to the Corporation, specifically, to appoint Margaret Tobin as its Chief Financial Officer. Further, Mr. Beyer explained that similar to the approach taken with the General Counsel position, the Board was also being asked to designate all future appointments to the positions of Chief Financial Officer, Treasurer and Controller as ex-officio to correspond to those positions at ESD.

Hearing no questions from the Directors and no requests for comments by the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

45. EMPIRE STATE NEW MARKET CORPORATION – Officers of the Corporation -  
Appointment of Officer

---

RESOLVED, that the following individual be, and hereby is, appointed to the office which appears opposite her name, until earlier resignation or removal, her appointment being effective as of the date indicated in the attached materials, a copy of which is hereby ordered to be filed with the records of the Corporation:

Chief Financial Officer – Margaret Tobin, ESD’s Chief Financial Officer, ex-officio; and

and be it further

RESOLVED, that in accordance with and for all purposes of the Corporations’ By-Laws, including but not limited to the indemnification provisions thereof, the above-referenced individual is an “officer” of the Corporation;

and be it further

RESOLVED, that the officer titles of Chief Financial Officer; Controller; and Treasure, now and henceforth, be appointed ex-officio with the corresponding positions at the New York State Urban Development Corporation, doing business as Empire State Development and confirms that these positions are “officers” of the Corporation within the meaning of the provisions of the Corporation’s By-Laws, including the indemnification provisions thereof.

Jonevan Hornsby then requested authorization for the Corporation to adopt its proposed budget for Fiscal Year 2015.

By way of background, Mr. Hornsby explained that the Corporation was incorporated in 2004 for the purpose of applying for an allocation of federal New Market Tax Credits ("NMTC") from the Community Development Financial Institutions ("CDFI") Fund and was awarded a \$30 million dollar allocation in May 2009. Further, he noted that with that allocation in September 2011, the Corporation closed on its first transaction, an \$18 million dollar investment to Agro-Farma, maker of Chobani Greek-style yogurt and in September 2012, it closed on its second transaction, a \$12 million dollar investment for the Brooklyn Navy Yard Development Corporation. Mr. Hornsby advised that in September 2013, ESNMC submitted an allocation application requesting a new \$50 million dollar allocation and ESNMC is awaiting notification regarding its application.

He stated that ESNMC continues to service the two closed transactions and hopes to receive a new allocation so it can close further transactions. Therefore, the Directors are being presented with the proposed budget for Fiscal Year 2015. Mr. Hornsby noted that ESNMC's revenues come from fees charged on transactions, approximately \$150,000 in Fiscal Year 2014. In addition Mr. Hornsby explained that, related to the expenses funded by fees the Corporation receives from transactions, ESNMC incurs certain transaction specific consulting expenses that

are paid by borrowers directly from transaction closing proceeds. He noted these expenses and the reimbursements associated with them have been excluded from the budget request. He advised however that these transactions-specific consulting expenses have been factored in the maximum contract amounts for the relevant legal and accounting contracts. And lastly, he explained that the proposed budget for Fiscal Year 2015 reflects \$95,120 of expenses which consist primarily of consulting fees; legal fees; accounting fees; and insurance.

Acting Chair Adams asked if the possible amount that the Corporation will receive in tax credits will impact its operations and therefore the budget. Mr. Hornsby answered that it will not affect the budget as the fees for the consultants and accounting are taken directly out of the transactions. However, he did note the revenue stream would be higher receiving \$50 million dollars versus the \$30 million dollars previously received.

In response to Acting Chair Adams' question, Mr. Hornsby advised that the Corporation expects to receive an answer on its application in late April and in response to a question from Director Shaffer, Mr. Hornsby advised that the Corporation has enough funds to service any future applications even if it doesn't receive an allocation this year because it has approximately \$800,000 dollars from prior transaction fees.

Acting Chairman Adams asked how often the Corporation submits an application to which Mr. Hornsby replied that the Corporation does apply every year and that it had submitted a very strong application this year.

Hearing no further questions from the Directors and no requests for comments by the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

46. EMPIRE STATE NEW MARKET CORPORATION – Approval of Fiscal Year 2015 Budget

---

RESOLVED, that the Corporation hereby adopts the proposed Fiscal Year 2015 budget on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate.

\* \* \*

Next, Acting Chair Adams asked Mr. Beyer to present the last item on the Agenda, a request for authorization for the Corporation to adopt Procurement Guidelines.

Mr. Beyer stated that the ESD Board approved Procurement Guidelines earlier today and now all of its subsidiaries would be adopting those same Guidelines. He advised that while the materials stated there might be a need to amend the Guidelines if the ESD Board did at its earlier meeting, no amendment was made at the ESD meeting.

Mr. Beyer briefly summarized the Guidelines and stated they explained the various means of obtaining goods and services in an open, transparent and accountable manner, including the incorporation of the ESD Bid Opening Guidelines and the compilation of a procurements record for every covered procurement contract. He noted the Guidelines are

consistent with the State's Procurement Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and they be accountable for sufficient monitoring of their spending.

Explaining some of the changes from last year's Guidelines, Mr. Beyer noted that all vendors of goods and services shall be encouraged to use New York suppliers and that vendors would be asked to demonstrate integrity and continuing financial and other ability to carry out the contract. Lastly Mr. Beyer explained that in order to make vendors more accountable to the Corporation, the vendors will be asked to submit a Vendrep form which helps to track and index all Vendors who've applied for State of City contracts and to track if there are any bad acts reported or complaints about them.

In response to a request for questions from the Directors, Director Patel asked if there was a need to adopt prequalified lists of counsel or consultants that was adopted by the ESD Board. Mr. Beyer replied that the prequalified counsel list was previously approved by the Corporation.

Noting no further questions or comments from the Directors and hearing no comments from the public, Acting Adams called for a motion to approve the item. Upon motion duly made and seconded, the following resolution was unanimously adopted:

47. EMPIRE STATE NEW MARKET CORPORATION – ESNMC Procurements Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts
- 

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the proposed 2014 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the President or his designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution;

and be it further

RESOLVED, THAT IN THE EVENT THAT THE PROPOSED 2014 Guidelines are amended by the ESD Board at its meeting to be held on March 28, 2014, the Guidelines so amended shall be substituted for the adopted 2014 Guidelines attached to the attached Board materials, a copy of which is hereby ordered to be filed with the records of the Corporation.

\* \* \*

There being no further business, the meeting was adjourned at 2:25 p.m.

Respectfully submitted,

Deborah Royce  
Corporate Secretary

**Item # 2**

FOR CONSIDERATION

September 29, 2014

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Advisory Board

REQUEST FOR: Confirmation and Appointment of Advisory Board Members

---

I. BackgroundAdvisory Board Appointments

Empire State New Market Corporation (“ESNMC” or the “Corporation”) has an eight member Advisory Board that ensures the accountability of ESNMC to Low-Income Communities, in compliance with NMTC program requirements. The Advisory Board currently consists of five individuals, and ESNMC now recommends that the following three individuals be added as Advisory Board Members for a full complement of members:

- **Thomas Dolan:** Mr. Dolan is Chief Operating Officer of CEI Capital Management LLC (CCML), the for-profit subsidiary of Coastal Enterprises, Inc. (CEI) and a certified Community Development Entity. Mr. Dolan oversees CCML’s investment, operations and portfolio compliance, and also manages the CCML Asset Management Team. He has over twenty years’ experience in real estate finance, law, and community development. Prior to his work at CCML, Mr. Dolan served as General Counsel for Fannie Mae’s American Communities Fund, Vice President & Associate General Counsel for CarrAmerica Realty Corporation, and In-house Counsel for The Peterson Companies L.C. Prior to going in-house, he practiced law at Paul, Hastings, Janofsky & Walker and Rogers & Wells.
- **Stuart Mitchell:** Mr. Mitchell has served as the President and CEO of PathStone since 1977. He has steered the growth of the organization into a \$48 million multi-state agency that is governed by a community-based Board of Directors and employs 500 people. Mr. Mitchell is active in several organizations that address issues of concern to marginalized individuals and families. He is past President of the National Association of Farmworker Opportunity Programs and presently the President/Treasurer of USA Farmworker PAC, an organization that advocates for federal funding of farmworker job training programs.

- **Michael Zisser:** Mr. Zisser has served as Chief Executive Officer for University Settlement Society of New York since 1988, and has successfully shepherded the Settlement through a period of tremendous growth and development. He is also Chief Executive Officer of The Door, and oversees all operations of both organizations, as well as the interface between the two. Mr. Zisser serves on the Boards of the International Federation of Settlements and Community Centers, the United Neighborhood Houses of New York, and the NYC Human Services Council. Previously, Mr. Zisser was the Chairperson and Associate Professor in the Department of City and Regional Planning at Pratt Institute.

#### Advisory Board – Confirmations

Current members of the Advisory Board continue to serve and advise the Empire State New Market Corporation. All of the members listed below are confirmed as current Advisory Board members and all terms are extended until such member resigns or is removed by the Board of Directors of the Empire State New Market Corporation.

Peggy Adams  
Margaret Ellsworth  
Ray Gillen  
Shawn Hogan  
Yvette Stennett

#### II. Requested Actions

The Directors are requested to make three new appointments of the aforementioned individuals to serve on the Advisory Board and to confirm the current members of the Advisory Board with extended terms.

Attachment  
Resolutions

September 29, 2014

EMPIRE STATE NEW MARKET CORPORATION – Advisory Board - Confirmation and Appointment of Advisory Board Members

---

RESOLVED, that in accordance with the attached materials, a copy of which is hereby ordered to be filed with the records of the Corporation the following individuals be, and are hereby, appointed to the Advisory Board, the appointments being effective from this date and until such individual resigns or is removed by the Board of Directors of the Empire State New Market Corporation:

Thomas Dolan  
Stuart Mitchell  
Michael Zisser;

and be it further

RESOLVED, that the individuals listed below are confirmed as current Advisory Board members and all terms of such service are extended until such member resigns or is removed by the Board of Directors of the Empire State New Market Corporation:

Peggy Adams  
Margaret Ellsworth  
Ray Gillen  
Shawn Hogan  
Yvette Stennett;

and be it further

RESOLVED, that authorized Officers or their designee(s) are each hereby authorized and directed to approve and execute such documents and take such other actions, in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary or appropriate to carry out the foregoing resolution, and all such actions heretofore taken by such Authorized Officer in connection with or pursuant to this resolution and any and all actions taken by listed individuals serving in their capacity as members of the Advisory Board are hereby ratified and approved.

\* \* \*

**Item # 3**

FOR CONSIDERATION

September 29, 2014

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: NMTC Allocation Application

REQUEST FOR: Authorization to Sign and File a 2014 NMTC Allocation Application; and to Take Related Actions

---

I. Background

Empire State New Market Corporation (“ESNMC”) was incorporated in 2004 for the purpose of applying for an allocation of New Markets Tax Credits (“NMTCs”) from the Community Development Financial Institutions (“CDFI”) Fund of the U.S. Department of Treasury. ESNMC received notice of its first allocation of NMTCs in May 2009. In September 2011, ESNMC closed its first NMTC transaction, an \$18 million Qualified Equity Investment (“QEI”) for Agro-Farma, maker of Chobani Greek-style yogurt; and in September 2012, ESNMC closed its second NMTC transaction, a \$12 million QEI for Brooklyn Navy Yard Development Corporation. The two transactions accounted for ESNMC’s entire \$30 million allocation of NMTCs.

ESNMC would now like to apply for a new allocation of NMTCs from the CDFI Fund and plans to submit its allocation application to the CDFI Fund requesting a \$60 million 2014 round allocation on October 1, 2014. The application reflects ESNMC’s strategy to use an NMTC allocation, past projects, potential future projects, management capacity, and other related ESNMC experience to enhance its qualifications. ESNMC staff has worked closely with ESNMC’s NMTC consultant, the National Development Council, to prepare the application.

II. Environmental Review

Empire State Development staff, on behalf of the ESNMC, has determined that the requested authorization to sign and file a 2014 NMTC allocation application does not constitute an action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

III. Requested Action

The Directors are requested to approve the authorization to sign and file a 2014 NMTC allocation application, and direct and authorize Jonevan Hornsby, as Authorized Representative of ESNMC, to act in connection with the allocation application and to provide such additional information as may be required.

Attachments

Resolution

September 29, 2014

EMPIRE STATE NEW MARKET CORPORATION – NMTC Allocation Application – Authorization to Sign and File a 2014 New Market Tax Credit Allocation Application; and to Take Related Actions

---

RESOLVED, that the Corporation is authorized to sign and file a 2014 New Market Tax Credit allocation application on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate. Any actions previously taken by the Corporation in furtherance of the actions authorized herein are hereby ratified and approved.

\* \* \*